

**DAVIS POLK & WARDWELL LLP**

450 LEXINGTON AVENUE  
NEW YORK, NY 10017

212 450 4000  
FAX 212 450 3800

MENLO PARK  
WASHINGTON, D.C.  
LONDON  
PARIS  
MADRID  
TOKYO  
BEIJING  
HONG KONG

LAWRENCE PORTNOY  
212 450 4874  
LAWRENCE.PORTNOY@DAVISPOLK.COM

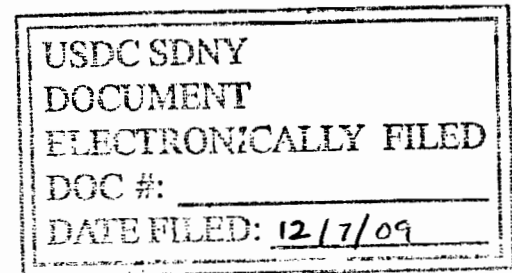
DEC 04 2009



December 3, 2009

Re: *In re Bank of America Corp. Securities, Derivative, and ERISA Litigation*  
(Derivative Actions), Master File No. 09 MDL 2058 (DC)

The Honorable Denny Chin  
United States District Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 1020  
New York, New York 10007



Dear Judge Chin:

Our firm represents the following current and former directors and officers of Bank of America Corporation as individual defendants in the consolidated derivative action which is included in the above-captioned MDL proceeding: Kenneth D. Lewis, J. Steele Alphin, Keith T. Banks, Teresa Brenner, Amy Woods Brinkley, Neil A. Cotty, Gregory Curl, Timothy Mayopoulos, Thomas Montag, Brian T. Moynihan, Joe L. Price, William Barnett, III, Frank P. Bramble, Sr., John T. Collins, Gary L. Countryman, Tommy R. Franks, Charles K. Gifford, Monica C. Lozano, Walter E. Massey, Thomas J. May, Patricia E. Mitchell, Thomas M. Ryan, O. Temple Sloan, Jr., Meredith R. Spangler, Robert L. Tillman and Jackie M. Ward (collectively, the "Individual Bank of America Defendants"). Under the scheduling stipulation that Your Honor ordered on June 30, 2009, defendants' motions to dismiss the consolidated derivative complaint are due on December 8, 2009.

We write to request leave of the Court to file a memorandum of law of up to 60 pages (instead of the 25-page limit provided in Your Honor's rules) in support of the motion to dismiss being made by the Individual Bank of America Defendants, with an additional submission on behalf of defendant Thomas Montag not to exceed ten pages.

The consolidated derivative complaint includes 361 numbered paragraphs of allegations, spans 144 pages and purports to set forth six claims for relief against the defendants listed above, including both derivative claims and a direct claim on behalf of shareholders of Bank of America. We believe that submitting

one memorandum on behalf of the Individual Bank of America Defendants (and the brief submission on behalf of Mr. Montag, addressing issues not presented by the other defendants listed above) is more efficient than filing separate memoranda on behalf of each defendant or each category of defendants in this group. We do not believe it is practical to address in 25 pages all of the arguments in support of dismissal of the consolidated derivative complaint that we plan to assert on behalf of these defendants, including that the complaint (i) fails to show that plaintiffs are excused from the requirement of making a pre-suit demand on the Bank of America board of directors with respect to derivative claims and (ii) fails to state a claim under Rule 12(b)(6).

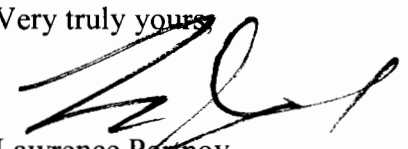
In addition to the memoranda that we plan to submit on behalf of the Individual Bank of America Defendants, we understand that Sullivan & Cromwell LLP plans to submit a memorandum not to exceed 25 pages on behalf of defendants J.C. Flowers & Co. LLC and Fox-Pitt Kelton Cochran Caronia Waller (USA) LLC. Cravath, Swaine & Moore LLP plans to submit a memorandum not to exceed 25 pages on behalf of defendants who are former independent directors of Merrill Lynch & Co., Inc. Richards Kibbe & Orbe LLP plans to submit a memorandum not to exceed 10 pages on behalf of defendant Nelson Chai. Willkie Farr & Gallagher LLP and Richards Kibbe & Orbe LLP plan to submit a joint memorandum not to exceed 10 pages on behalf of defendants Peter Stingi and Michael Ross. Dechert LLP plans to submit a memorandum not to exceed 10 pages on behalf of defendant John Thain. Firms representing other defendants in the consolidated derivative action may also be submitting memoranda on behalf of their clients.

Lead counsel for plaintiffs in the consolidated derivative action have consented to the relief we request, on the understanding that plaintiffs in turn be allowed to file a memorandum in opposition to the joint submission of the Individual Bank of America Defendants not to exceed 60 pages, and that the customary 25-page limit shall govern plaintiffs' memoranda in opposition to any other defendants' submissions (both without prejudice to plaintiffs' right to apply later for additional pages on a showing of good cause therefore).

We thank Your Honor for your consideration.


*The proposed page limits  
for both sides, as set  
forth above, are*

Very truly yours,

  
Lawrence Portnoy

cc: All Counsel, by email (as per Service List)

*Approved.  
SO ORDERED.*

  
Davis Polk & Wardwell LLP

*USD 12/7/09*

## SERVICE LIST

Robert N. Kaplan, Esq.  
Fredric S. Fox, Esq.  
Joel B. Strauss, Esq.  
Donald R. Hall, Esq.  
Hae Sung Nam, Esq.  
Melinda Rodon, Esq.  
KAPLAN FOX & KILSHEIMER LLP  
850 Third Avenue, 14th Floor  
New York, New York 10022  
*rkaplan@kaplanfox.com*  
*ffox@kaplanfox.com*  
*jstrauss@kaplanfox.com*  
*dhall@kaplanfox.com*  
*hnam@kaplanfox.com*  
*mrodon@kaplanfox.com*

Max W. Berger, Esq.  
Steven B. Singer, Esq.  
Gerald H. Silk, Esq.  
Hannah G. Ross, Esq.  
Boaz A. Weinstein, Esq.  
Ann Lipton, Esq.  
John J. Rizio-Hamilton, Esq.  
Katherine M. Sinderson, Esq.  
BERNSTEIN, LITOWITZ, BERGER &  
GROSSMAN LLP  
1285 Avenue of the Americas  
New York, New York 10019  
*mwb@blbglaw.com*  
*steven@blbglaw.com*  
*jerry@blbglaw.com*  
*hannah@blbglaw.com*  
*boaz@blbglaw.com*  
*ann@blbglaw.com*  
*johnr@blbglaw.com*  
*katherinem@blbglaw.com*

Gregory M. Castaldo, Esq.  
David Kessler, Esq.  
Sean M. Handler, Esq.  
Darren J. Check, Esq.  
Sharan Nirmul, Esq.  
Jennifer L. Joost, Esq.  
Richard A. Russo, Jr., Esq.  
BARROWAY TOPAZ KESSLER MELTZER &  
CHECK LLP  
280 King of Prussia Road  
Radnor, Pennsylvania 19087  
*gcastaldo@btkmc.com*  
*dkessler@btkmc.com*  
*shandler@btkmc.com*  
*dcheck@btkmc.com*  
*snirmul@btkmc.com*  
*jkeeney@btkmc.com*  
*rrusso@btkmc.com*

*Plaintiffs' Lead Counsel for Consolidated Securities  
Class Action*

Robert I. Harwood, Esq.  
Peter W. Overs, Jr., Esq.  
HARWOOD FEFFER LLP  
488 Madison Avenue, 8th Floor  
New York, New York 10022  
*rharwood@hfesq.com*  
*povers@hfesq.com*

Lee Squitieri, Esq.  
SQUITIERI & FEARON, LLP  
32 East 57th Street, 12th Floor  
New York, New York 10022  
*lee@sfclasslaw.com*

Steve W. Berman, Esq.  
Andrew M. Volk, Esq.  
Nick Styant-Browne, Esq.  
HAGENS BERMAN STOBOL SHAPIRO LLP  
1301 Fifth Avenue, Suite 2900  
Seattle, Washington 98101  
*steve@hbsslaw.com*  
*andrew@hbsslaw.com*  
*nick@hbsslaw.com*

*Plaintiffs' Lead Counsel for Consolidated ERISA  
Action*

Lewis Kahn, Esq.  
Albert M. Myers, Esq.  
Kevin Oufnac, Esq.  
KAHN SWICK & FOTI LLC  
650 Poydras Street, Suite 2150  
New Orleans, Louisiana 70130  
*lewis.kahn@kgscounsel.com*  
*albert.myers@kgscounsel.com*  
*kevin.oufnac@kgscounsel.com*

Michael Swick, Esq.  
12 East 41st Street, 12th Floor  
New York, New York 10017  
*michael.swick@kgscounsel.com*

Maya Saxena, Esq.  
Joseph E. White III, Esq.  
Christopher S. Jones, Esq.  
Lester R. Hooker, Esq.  
SAXENA WHITE P.A.  
2424 North Federal Highway, Suite 257  
Boca Raton, Florida 33431  
*msaxena@saxenawhite.com*  
*jwhite@saxenawhite.com*  
*cjones@saxenawhite.com*  
*lhooker@saxenawhite.com*

*Plaintiffs' Lead Counsel for Consolidated Derivative  
Action*

Peter C. Hein, Esq.  
Eric M. Roth, Esq.  
Andrew C. Houston, Esq.  
WACHTELL, LIPTON, ROSEN & KATZ  
51 West 52nd Street  
New York, NY 10019  
*pchein@wlrk.com*  
*emroth@wlrk.com*  
*achouston@wlrk.com*

Mitchell A. Lowenthal, Esq.  
Lewis J. Liman, Esq.  
CLEARY GOTTLIEB STEEN &  
HAMILTON LLP  
One Liberty Plaza  
New York, NY 10006-1470  
*mloenthal@cgsh.com*  
*lliman@cgsh.com*

Robert D. Joffe, Esq.  
Richard W. Clary, Esq.  
Julie A. North, Esq.  
CRAVATH, SWAINE & MOORE LLP  
825 Eighth Avenue  
New York, New York 10019  
*rjoffe@cravath.com*  
*rclary@cravath.com*  
*jnorth@cravath.com*

Stuart Baskin, Esq.  
Adam S. Hakki, Esq.  
Herbert S. Washer, Esq.  
Terence Gilroy, Esq.  
SHEARMAN & STERLING LLP  
599 Lexington Avenue  
New York, New York 10022  
*sbaskin@shearman.com*  
*ahakki@shearman.com*  
*herbert.washer@shearman.com*  
*terence@gilroy@shearman.com*

Andrew Levander, Esq.  
David Hoffner, Esq.  
DECHERT LLP  
1095 Avenue of the Americas  
New York, New York 10036  
*andrew.levander@dechert.com*  
*david.hoffner@dechert.com*

Jennie Boehm Krasner  
DECHERT LLP  
P.O. Box 5218  
Princeton, New Jersey 08540  
*jennie.krasner@dechert.com*

Gary W. Kubek, Esq.  
DEBEVOISE & PLIMPTON LLP  
919 Third Avenue  
New York, New York 10022  
*gwkubek@debevoise.com*

Richard C. Pepperman II, Esq.  
SULLIVAN & CROMWELL LLP  
125 Broad Street  
New York, New York 10004  
*peppermanr@sullcrom.com*

Richard D. Bernstein, Esq.  
WILLKIE FARR & GALLAGHER LLP  
1875 K Street, N.W.  
Washington, D.C. 20006-1238  
*rbernstein@willkie.com*

Daniel C. Zinman, Esq.  
RICHARDS KIBBE & ORBE LLP  
One World Financial Center  
New York, NY 10281-1003  
*dzinman@rkollp.com*

*Attorneys for Defendants*